

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 KALEB J. COLE,

11 v.
12 Petitioner,

13 UNITED STATES OF AMERICA,
14 Respondent.

CASE NO. C24-1062-JCC

ORDER

15 This matter comes before the Court on Kaleb Cole’s motion for reconsideration (Dkt. No.
16 5). Having thoroughly considered the briefing and the relevant record, the Court DENIES the
17 motion for the reasons explained herein.

18 Mr. Cole seeks reconsideration of the Court’s order (Dkt. No. 4) denying service of his
19 motion to vacate, set aside, or correct his sentence, brought pursuant to 28 U.S.C. § 2255 (Dkt.
20 No. 1). (*See generally* Dkt. No. 5.) Under the Local Rules, “[m]otions for reconsideration are
21 disfavored.” LCR 7(h)(1). “The court will ordinarily deny [them] in the absence of a showing of
22 manifest error in the prior ruling or a showing of new facts or legal authority which could not
23 have been brought to its attention earlier with reasonable diligence.” *Id.*

24 Mr. Cole asserts the Court committed manifest error here when it failed to provide
25 specific findings of fact and conclusions of law in finding, based on the record before it, he is not
26 entitled to the relief sought through his petition, such that service under 28 U.S.C. § 2255(b) was

1 not required. (See Dkt. No. 5 at 3.) The Court reaffirms that finding here. It does so based on the
2 following findings of fact and conclusions of law:

- 3 1. On February 25, 2020, the Honorable Mary A. Theiler, United States Magistrate
4 Judge, signed a complaint alleging Mr. Cole committed the crime of Conspiracy
5 to Mail Threatening Communications and Commit Cyberstalking. *See U.S. v.*
6 *Cole*, Case No. CR20-0032-JCC-2, Dkt. No. 1 (W.D. Wash. 2020).
- 7 2. On March 4, 2020, a grand jury indicted Mr. Cole for Conspiracy to Mail
8 Threatening Communications and Commit Cyberstalking (Count 1) and Mailing
9 Threatening Communications (Counts 2–4). *Id.* at Dkt. No. 16.¹
- 10 3. Mr. Cole had an initial appearance and arraignment pursuant to Federal Rules of
11 Criminal Procedure 5, 5.1, 10, and 11. *Id.* at Dkt. Nos. 13, 27.
- 12 4. These charging documents were proper. *See Fed. R. Crim. P. 7.*
- 13 5. The Court had standing to hear Mr. Cole’s charges. *See Benson v. U.S.*, 402 F.2d
14 576, 580 (9th Cir. 1968).
- 15 6. To the extent Mr. Cole now suggests a denial of due process, he did not raise this
16 issue at trial and, therefore, “it is no longer open to him.” *Estrella v. U.S.*, 429
17 F.2d 397, 399 (9th Cir. 1970).

18 Having provided specific findings of fact and conclusions of law, the Court finds no
19 possibility of manifest error in concluding that service of Mr. Cole’s petition (Dkt. No. 1) on the
20 Government was not required. Nor does it find that it committed manifest error in denying Mr.
21 Cole a certificate of appealability, as it reaffirms its conclusion that a reasonable jurist could not
22 conclude the petition states a valid claim for relief. *See U.S. v. Winkles*, 795 F.3d 1134, 1143 (9th
23 Cir. 2015).

24 On this basis, the Court DENIES Mr. Cole’s motion for reconsideration (Dkt. No. 5).

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26 ¹ A superseding indictment was later entered. *See id.* at Dkt. No. 94.

1 DATED this 8th day of August 2024.
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John C. Coughenour

5 John C. Coughenour
6 UNITED STATES DISTRICT JUDGE
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